

SENATE BILL 3760

By Crowe

AN ACT to amend Tennessee Code Annotated, Title 47,  
Chapter 18, relative to junk mail.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part 54:

47-18-5401. As used in this part, unless the context otherwise requires:

(1) "Division" means the division of consumer affairs of the department of commerce and insurance;

(2) "Junk mail" means unsolicited direct marketing materials delivered by the postal service to a Tennessee residential address.

(3) "Person" means a natural person, individual, partnership, corporation, trust, estate, incorporated or unincorporated association and any other legal or commercial entity however organized and wherever located that telemarkets to citizens located within the state of Tennessee; and

(4) "Residential mail recipient" means a person who receives mail from the postal service for a residence whether at a physical residence or a post office box.

47-18-5402.

(a) The division shall establish and provide for the operation of a database to compile a list of residential mail recipients who object to receiving unsolicited junk mail. It shall be the duty of the division to have such database in operation no later than May 1, 2009. Such database may be operated by the division or by another entity under contract with the division.

(b) No later than January 1, 2009, the division shall promulgate regulations that:

(1) Require the division to post on its web site an announcement that informs citizens of the opportunity to provide notification to the division or its contractor that such subscriber objects to receiving junk mail;

(2) Specify the methods by which each residential mail recipient may give notice to the division or its contractor of such recipient's objection to receiving such solicitations or revocation of such notice;

(3) Specify the length of time for which a notice of objection shall be effective and the effect of a change of address on such notice;

(4) Specify the methods by which such objections and revocations shall be collected and added to the database;

(5) Specify the methods by which any person or entity desiring to send junk mail will obtain access to the database as required to avoid sending mail to addresses of residential mail recipients included in the database; and

(6) Specify such other matters that the division deems necessary to implement this part.

(c)

(1) A person or entity desiring to send junk mail to any residential mail recipient shall pay to the division by certified check or money order, on or before March 15, 2009, an annual registration fee of five hundred dollars (\$500) to defray regulatory and enforcement expenses. Such annual registration fee shall allow access to the No Junk Mail Register

compiled from the database established under this part; such registration and access shall be limited to the time period April 1, 2009, until June 30, 2010, or any part thereof. Thereafter, the registration deadline and annual time period shall be determined by rule duly promulgated by the division.

(2) Unlimited electronic copies of the No Junk Mail Register shall be available to persons or entities upon their payment of the annual registration fee. A fee shall be established by rule of the division for paper copies of the No Junk Mail Register.

(3) Fifteen (15) days after the registration deadline, the non-payment of any required fee is a violation of this part. The solicitation with junk mail of any residential mail subscriber listed in the No Junk Mail Register compiled from the database established under this part, by any person or entity who is not duly registered and who is not otherwise exempted by law, is a violation of this part.

(4) As used in this subsection (c), entity includes any parent, subsidiary, or affiliate of a person.

(d) Information contained in the database established under this part shall not be subject to public inspection or disclosure under title 10, chapter 7. Such information shall be used only for the purpose of compliance with this part or in a proceeding or action under this part.

(e) The division is authorized to initiate proceedings relative to a violation of this part or any rules and regulations promulgated pursuant to this part. Such proceedings include, without limitation, proceedings to issue a cease and desist order, to issue an order imposing a remedial civil penalty up to a maximum of two

thousand dollars (\$2,000) for each knowing violation, and to seek additional relief in any court of competent jurisdiction. Each violation shall be calculated in a liberal manner to deter violations and to protect consumers. Each violation may include each solicitation of junk mail made to a residential mail recipient that was on the list that the violator mailed. The division is authorized to issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of this part, in accordance with this title. All civil penalties assessed pursuant to of this part shall be deposited in the general fund account in the state treasury.

(f) No later than January 1, 2009, the division shall hold a hearing to receive testimony from entities subject to the provisions of this part who employ independent contractors to make junk mail solicitations to determine if the division should authorize such independent contractors to access the database at a reduced fee. The division is authorized to allow such access and develop a fee schedule for access to the database by independent contractors and the entity which employs such contractors.

(g) As supplementary to the authority of the division granted in this part, the attorney general and reporter, at the request of the division, may bring an action in any court of competent jurisdiction in the name of the state against any person or entity relative to a violation of this part or any rules and regulations promulgated pursuant to this part. The courts are authorized to issue orders and injunctions to restrain and prevent violations of this part, and such orders and injunctions shall be issued without bond. In any action commenced by the state, the courts are authorized to order reasonable attorneys' fees and investigative costs be paid by the violator to the state. An action brought by the attorney

general may also include other causes of action such as but not limited to a claim under the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1.

(h) Upon request of any person, the division shall initiate a rulemaking proceeding establishing the rules pursuant to which a registrant may share the No Junk Mail Register with persons affiliated with the registrant as an independent contractor or member.

47-18-5403. It shall be a defense in any action or proceeding brought under this part that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this part.

47-18-5404. Residential mail recipients may enroll on the No Junk Mail Register in the manner prescribed by the division. Enrollment shall take effect thirty (30) days following the first day of the succeeding month of enrollment by the subscriber.

47-18-5405. The commissioner of commerce and insurance is authorized to promulgate rules to implement the provisions of this part in accordance with the provisions of the title 4 chapter 5.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 2008, the public welfare requiring it.